

DA 98-1941

**Before the
Federal Communications Commission
Washington, D.C. 20554**

MM Docket No. 98-175
RM-9364

¹ Inasmuch as petitioner is not proposing to add a new NTSC allotment to the TV Table of Allotments in Section 73.606(b) of the Rules, we will consider the proposal. See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 11 FCC Rcd 10968, 10992 (1996).

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more powerful of the two stations, has a more extensive signal reach, and is technically more advanced.² In addition, petitioner notes that continuation of effective operations on Station WNEQ Channel 23 has been an expensive and unproductive enterprise. Funds and resources have been drained from Station WNED-TV and it has been difficult to program Station WNEQ-TV, Channel 23 on any extended hourly basis. Because of cost constraints, Station WNEQ Channel 23 operates only eight hours a day. It has been utilized primarily for certain programming which would not normally appeal to most of the viewing audience for Station WNED-TV. Petitioner also states that it expects the cost of digital conversion for both stations to be prohibitive, and that converting two stations yielding eight channels makes neither economic nor programming sense.

4. Petitioner states that retention of Station WNED-TV on a reserved channel is in the public interest because the endowment fund it will create from the sale of Station WNEQ-TV on Channel 23 will raise Station WNED-TV to the position of a major television producer, and enable it to acquire additional programs. The additional funding will also allow Station WNED-TV to include enriched educational community outreach services. In addition, petitioner states that the endowment fund will defray the costs associated with converting Station WNED-TV to digital broadcast service by 2003. Following digital conversion, petitioner states that Station WNED-TV will be increased from one channel to four and special receivers will enable viewers to select from among a menu of programs it broadcasts. Petitioner states that it enjoys state-of-the-art production facilities, and, through its endowment fund, programming on Station WNED-TV may be marketed through diverse broadcast and non-broadcast sources.

5. We believe petitioner's proposal warrants consideration, and we will solicit comments on the proposal. This proposal does not propose to remove or add any channel, nor would it alter the total number of channels in Buffalo which are reserved for non-commercial educational use. No technical changes are involved in this exchange of channel reservation. Petitioner's proposal merely would change the reservation for non-commercial educational use from one channel to another, both in the Television Table of Allotments and in the DTV Table of Allotments. The exchange therefore, can be made at each station's current site.

6. The Commission believes it would serve the public interest to solicit comments on the proposal to dereserve Channel *23 at Buffalo, New York, and to reserve Channel 17 for non-commercial use at Buffalo. Therefore, we will seek comment on the proposed amendment to the Television Table of Allotments, Section 73.506(b) of the Commission's Rules, with respect to Buffalo, as follows:

Community	Channel No.	
	Present	Proposed
Buffalo, New York	2, 4, 7, 1 *23, 29, 49	2, 4, 7, *17 23, 29, 49

7. We also seek comment on the proposed amendment to the DTV Table of Allotments, Section 73.622(b), of the Commission's Rules with respect to Buffalo, as follows:

Community	Channel No.	
	Present	Proposed
Buffalo, New York	14, *32, 33 34, 38, 39, 43	14, 32, 33, 34 38, 39, *43

² Station WNED-TV operates on Channel 17 with 2510 kW at 330 meters HAAT while Station WNEQ-TV operates on Channel 23 with 950 KW at 314 meters HAAT.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, and the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference

Room at its headquarters, 1919 M Street, N.W., Washington, D. C.